

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1982**

---

**Introduced by Assembly Member Ting**

February 19, 2014

---

An act to ~~amend Section 1109 of the Evidence Code, and to amend~~  
Section 646.9 of the Penal Code, relating to stalking.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1982, as amended, Ting. Stalking.

Under existing law, any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that fine and imprisonment, or by imprisonment in the state prison. Existing law provides that a person who violates these provisions after having been convicted of certain other crimes is subject to additional punishment, as specified.

This bill would instead provide that a person is guilty of the crime of stalking when that person *makes a credible threat and* willfully engages in a course of conduct, as defined, directed at a specific person or group of persons and knows or should have known that the course of conduct would cause a reasonable person to fear for his or her safety or the safety of his or her immediate family. For those purposes, the bill would include in the definition of “immediate family” a domesticated pet. By

changing the definition of a crime, the bill would impose a state-mandated local program.

~~Under existing law, evidence of a person's character or a trait of his or her character is inadmissible when offered to prove his or her conduct on a particular occasion, except as specified. Existing law provides, however, that when a defendant is accused of an offense involving domestic violence in a criminal action, evidence of the defendant's commission of other domestic violence may be admitted to prove the defendant's conduct, except when the court exercises its discretion to exclude the evidence of prior acts, as specified.~~

~~This bill would provide that when a defendant is accused of an offense involving stalking in a criminal action, evidence of the defendant's prior acts of stalking may be admitted to prove the defendant's conduct, except as specified.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. Section 1109 of the Evidence Code is amended~~
- 2     ~~to read:~~
- 3     ~~1109. (a) (1) Except as provided in subdivision (c) or (f), in~~
- 4     ~~a criminal action in which the defendant is accused of an offense~~
- 5     ~~involving domestic violence, evidence of the defendant's~~
- 6     ~~commission of other domestic violence is not made inadmissible~~
- 7     ~~by Section 1101 if the evidence is not inadmissible pursuant to~~
- 8     ~~Section 352.~~
- 9     ~~(2) Except as provided in subdivision (c) or (f), in a criminal~~
- 10    ~~action in which the defendant is accused of an offense involving~~
- 11    ~~abuse of an elder or dependent person, evidence of the defendant's~~
- 12    ~~commission of other abuse of an elder or dependent person is not~~
- 13    ~~made inadmissible by Section 1101 if the evidence is not~~
- 14    ~~inadmissible pursuant to Section 352.~~
- 15    ~~(3) Except as provided in subdivision (c) or (f) and subject to~~
- 16    ~~a hearing conducted pursuant to Section 352, which shall include~~

1 consideration of any corroboration and remoteness in time, in a  
2 criminal action in which the defendant is accused of an offense  
3 involving child abuse, evidence of the defendant's commission of  
4 child abuse is not made inadmissible by Section 1101 if the  
5 evidence is not inadmissible pursuant to Section 352. This  
6 paragraph does not prohibit or limit the admission of evidence  
7 pursuant to subdivision (b) of Section 1101.

8 (4) Except as provided in subdivision (e) or (f), in a criminal  
9 action in which the defendant is accused of an offense involving  
10 stalking, evidence of the defendant's commission of other acts of  
11 stalking is not made inadmissible by Section 1101 if the evidence  
12 is not inadmissible pursuant to Section 352.

13 (b) In an action in which evidence is to be offered under this  
14 section, the people shall disclose the evidence to the defendant,  
15 including statements of witnesses or a summary of the substance  
16 of any testimony that is expected to be offered, in compliance with  
17 the provisions of Section 1054.7 of the Penal Code.

18 (e) This section shall not limit or preclude the admission or  
19 consideration of evidence under any other statute or case law.

20 (d) As used in this section:

21 (1) "Abuse of an elder or dependent person" means physical or  
22 sexual abuse, neglect, financial abuse, abandonment, isolation,  
23 abduction, or other treatment that results in physical harm, pain,  
24 or mental suffering, the deprivation of care by a caregiver, or other  
25 deprivation by a custodian or provider of goods or services that  
26 are necessary to avoid physical harm or mental suffering.

27 (2) "Child abuse" means an act proscribed by Section 273d of  
28 the Penal Code.

29 (3) "Domestic violence" has the meaning set forth in Section  
30 13700 of the Penal Code. Subject to a hearing conducted pursuant  
31 to Section 352, which shall include consideration of any  
32 corroboration and remoteness in time, "domestic violence" has  
33 the further meaning as set forth in Section 6211 of the Family Code  
34 if the act occurred no more than five years before the charged  
35 offense.

36 (4) "Stalking" has the meaning set forth in Section 646.9 of the  
37 Penal Code.

38 (e) Evidence of acts occurring more than 10 years before the  
39 charged offense is inadmissible under this section, unless the court

1 determines that the admission of this evidence is in the interest of  
2 justice.

3 (f) Evidence of the findings and determinations of administrative  
4 agencies regulating the conduct of health facilities licensed under  
5 Section 1250 of the Health and Safety Code is inadmissible under  
6 this section.

7 ~~SEC. 2.~~

8 *SECTION 1.* Section 646.9 of the Penal Code is amended to  
9 read:

10 646.9. (a) A person who ~~willfully~~, *makes a credible threat*  
11 *and willfully* engages in a course of conduct directed at a specific  
12 person or group of persons and knows or should have known that  
13 the course of conduct would cause a reasonable person to fear for  
14 his or her safety or the safety of his or her immediate family is  
15 guilty of the crime of stalking, punishable by imprisonment in a  
16 county jail for not more than one year, or by a fine of not more  
17 than one thousand dollars (\$1,000), or by both that fine and  
18 imprisonment, or by imprisonment in the state prison.

19 (b) A person who violates subdivision (a) when there is a  
20 temporary restraining order, injunction, or any other court order  
21 in effect prohibiting the behavior described in subdivision (a)  
22 against the same party, shall be punished by imprisonment in the  
23 state prison for two, three, or four years.

24 (c) (1) A person who, after having been convicted of a felony  
25 under Section 273.5, 273.6, or 422, commits a violation of  
26 subdivision (a) shall be punished by imprisonment in a county jail  
27 for not more than one year, or by a fine of not more than one  
28 thousand dollars (\$1,000), or by both that fine and imprisonment,  
29 or by imprisonment in the state prison for two, three, or five years.

30 (2) A person who, after having been convicted of a felony under  
31 subdivision (a), commits a violation of this section shall be  
32 punished by imprisonment in the state prison for two, three, or  
33 five years.

34 (d) In addition to the penalties provided in this section, the  
35 sentencing court may order a person convicted of a felony under  
36 this section to register as a sex offender pursuant to Section  
37 290.006.

38 (e) For the purposes of this section, "course of conduct" means  
39 two or more acts occurring over a period of time, however short,  
40 evidencing a continuity of purpose. The conduct may include, but

is not limited to, acts committed directly, indirectly, electronically, or through third parties. The conduct may also include, but is not limited to, acts committed by any gesture, method, or device; following, monitoring, observing, or physically or electronically surveilling, threatening, or interfering with a person's property; or identity theft of, false personation of, or communicating to or about, a person. Constitutionally protected activity is not included within the meaning of "course of conduct."

(f) *For the purposes of this section, "credible threat" means a verbal or written threat, including a threat conveyed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the apparent ability to carry out the threat so that it would cause a reasonable person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the credible threat does not bar his or her prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."*

(g) *For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Section 2510(12) of Title 18 of the United States Code.*

~~(f)~~

(h) This section shall not apply to conduct that occurs during labor picketing.

~~(g)~~

(i) If probation is granted, or the execution or imposition of a sentence is suspended, for a person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

~~(h)~~

(j) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that

1 may be valid for up to 10 years, as determined by the court. It is  
2 the intent of the Legislature that the length of any restraining order  
3 be based upon the seriousness of the facts before the court, the  
4 probability of future violations, and the safety of the victim and  
5 his or her immediate family.

6 (2) This protective order may be issued by the court whether  
7 the defendant is sentenced to state prison, county jail, or if  
8 imposition of sentence is suspended and the defendant is placed  
9 on probation.

10 (i)  
11 (k) For purposes of this section, “immediate family” means a  
12 spouse, parent, child, domesticated pet, a person related by  
13 consanguinity or affinity within the second degree, or any other  
14 person who regularly resides in the household, or who, within the  
15 prior six months, regularly resided in the household.

16 (j)  
17 (l) The court shall consider whether the defendant would benefit  
18 from treatment pursuant to Section 2684. If it is determined to be  
19 appropriate, the court shall recommend that the Department of  
20 Corrections and Rehabilitation make a certification as provided in  
21 Section 2684. Upon the certification, the defendant shall be  
22 evaluated and transferred to the appropriate hospital for treatment  
23 pursuant to Section 2684.

24 ~~SEC. 3.~~

25 SEC. 2. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.